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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Jin Ah Lee, decedent, by her estate
10 representative, Jungil Lee, Sang Chul Lee,
11 decedent's father, and Dukson Lee,
12 decedent's mother,

13 Plaintiffs,

14 vs.

15 ANC Car Rental Corp., General Motors
16 Corp., and Hong-Jun Jeon,

17 Defendants.

No. CV11-8135-PCT-DGC

ORDER

18 Defendant Jeon moves to sever Plaintiffs' claims against him and remand to state
19 court. Doc. 12. Defendants Motors Liquidation Company GUC Trust ("GUC Trust"), as
20 successor to General Motors Corporation ("GM"), opposes Jeon's motion to sever and
21 remand. Doc. 15. Defendant Alamo Rent A Car, LLC ("ANC") joins GUC Trust's
22 opposition. Doc. 16.

23 Plaintiffs oppose Jeon's motion to sever and have filed a cross-motion to remand
24 to state court without severance. Doc. 18. GUC Trust opposes the cross-motion to
25 remand. Doc. 21. ANC joins GUC Trust's opposition. Doc. 22.

26 Jeon's motion to sever and remand has been fully briefed. Docs. 12, 15, 20. No
27 reply has been filed to Plaintiffs' cross-motion to remand without severance. Docs. 18,
28 21, 26. Defendant Jeon's request for oral argument (Doc. 14) is denied, as the issues
have been sufficiently briefed and oral argument will not aid in the Court's decision. For

1 the reasons that follow, the Court will grant in part Jeon's motion, grant in part Plaintiff's
2 motion, and remand the case to state court.

3 **I. Background.**

4 In August 2003, Plaintiffs filed a personal injury and wrongful death action
5 against GM and other defendants in the District of Arizona based on federal diversity
6 jurisdiction. Doc. 1, at 2. On October 18, 2004, Judge Teilborg dismissed the case for
7 lack of complete diversity. *Id.* at 2, n.4. In May 2005, Plaintiffs filed the instant action in
8 the Arizona Superior Court based on the same underlying facts and claims asserted in the
9 District Court action. Civil Cause No. CV2005-0307.

10 In 2009, GM filed for Chapter 11 reorganization in the United States Bankruptcy
11 Court in the Southern District of New York. Case No. 09-50026 (REG). On
12 February 22, 2010, Plaintiffs filed proof of claim number 70062 (the "Lee Bankruptcy
13 Claim") relating to this action. Doc. 1, at 3. Pursuant to the Stipulation and Agreed
14 Order between GM and Plaintiffs (the "May 2010 Stipulation"), Plaintiffs agreed to cap
15 the Lee Bankruptcy Claim at \$20,000,000. Docs. 1, at 3, n.5, 15, at 4. On March 28,
16 2011, the Bankruptcy Court confirmed GM's Second Amended Joint Chapter 11 Plan
17 and established GUC Trust. Doc. 15, at 4. The Lee Bankruptcy Claim was among the
18 claims transferred to GUC Trust. *Id.* GUC Trust is the successor to GM in this action.

19 On August 2, 2011, after Plaintiffs and GUC Trust were unable to resolve the Lee
20 Bankruptcy Claim through mandatory mediation, the Bankruptcy Court entered the
21 Stipulation and Agreed Order between GUC Trust, Sang Chul Lee, and Dukson Lee
22 Providing for Limited Modification of the Automatic Stay and Plan Injunction (the
23 "Stipulation and Agreed Order") to enable this case to proceed to final judgment or
24 settlement, subject to GUC Trust's right to seek removal or transfer of venue. Docs. 15-
25 1, at 4. On September 1, 2011, GUC Trust filed a Notice of Removal (Doc. 1) pursuant
26 to 28 U.S.C. § 1452(a), asserting that this Court has jurisdiction under § 1334(b).

27 **II. Removal and Remand Principles.**

28 A civil case brought in state court over which a federal district court has original

1 jurisdiction may be removed to the federal court in the district where the action is
2 pending, pursuant to 28 U.S.C. § 1441(a). The statute is to be strictly construed against
3 removal jurisdiction. *See Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32
4 (2002). The “strong presumption” against removal “means that the defendant always has
5 the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
6 (9th Cir. 1992). Federal jurisdiction must be rejected, and the case remanded to state
7 court, “if there is any doubt as to the right of removal in the first instance.” *Id.*;
8 *see* 28 U.S.C. § 1447(c). The burden of showing jurisdiction falls on the party asserting
9 jurisdiction. *Indus. Techtonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

10 **III. “Related To” Bankruptcy Jurisdiction.**

11 Federal courts have original jurisdiction over cases “related to” bankruptcy
12 proceedings. 28 U.S.C. § 1334(b). The Ninth Circuit has adopted the Third Circuit’s test
13 in *Pacor* for determining the scope of “related to” jurisdiction. *In re Pegasus*
14 *Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005) (citing *In re Fietz*, 852 F.2d 455, 457
15 (9th Cir. 1988)). Under the *Pacor* test, federal courts have “related to” jurisdiction over
16 any proceeding where “the outcome could conceivably have any effect on the estate
17 being administered in bankruptcy.” *Id.* (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994
18 (3rd Cir. 1984)).

19 The Ninth Circuit has stated, however, that bankruptcy jurisdiction after a
20 reorganization plan has been approved (i.e., post-confirmation jurisdiction) is necessarily
21 more limited than pre-confirmation jurisdiction, and has adopted the Third Circuit’s
22 “close nexus” test for determining whether post-confirmation “related to” jurisdiction
23 exists. *Pegasus*, 394 F.3d at 1194. The Third Circuit concluded that “matters affecting
24 the ‘interpretation, implementation, consummation, execution, or administration of the
25 confirmed plan will typically have the requisite close nexus.’” *Id.* (quoting *In re Resorts*
26 *Int’l, Inc.*, 372 F.3d 154, 167 (3rd Cir. 2004)).

27 In its September 1, 2011 Notice of Removal, GUC Trust asserts that this Court has
28 jurisdiction pursuant to 28 U.S.C. § 1334(b) because the action is “related to” GM’s

1 bankruptcy proceedings. Doc. 1, at 4. The Lee Bankruptcy Claim seeks unliquidated
2 damages against GUC Trust for, *inter alia*, wrongful death, pain and suffering, and
3 survival claims. Doc. 1, at 5. GUC Trust claims that the jurisdictional requirements of
4 § 1334(b) are satisfied because the outcome of the instant litigation will certainly have a
5 “conceivable effect” on GM’s bankruptcy estates. *Id.* (citing *Kaonohi Ohana, Ltd. V.*
6 *Sutherland*, 873 F.2d 1302, 1306 (9th Cir. 1989)). The “conceivable effect” standard that
7 GUC Trust quotes, articulated in *Pacor*, applies in the pre-confirmation context. A
8 bankruptcy plan has been confirmed here, rendering this a post-confirmation action. *See*
9 Doc. 15, at 4.¹ The Court will apply the “close nexus” test adopted by the Ninth Circuit
10 to determine whether post-confirmation “related to” bankruptcy jurisdiction exists.

11 GUC Trust did not address the post-confirmation issue in its Notice of Removal
12 (Doc. 1), but now quotes the standard in its opposition to Jeon’s motion to sever and
13 remand, noting that “related to” jurisdiction extends to matters that affect “the
14 interpretation, implementation, consummation, execution, or administration of the
15 confirmed plan.” Doc. 15, at 5-6 (citation omitted). But GUC Trust makes no factual
16 argument to demonstrate that the pending litigation meets this standard. Instead, it
17 merely claims that the litigation “will determine the GUC Trust’s liability and the amount
18 of damages, if any, owed to Plaintiffs” and concludes that “[u]ndoubtedly, the outcome of
19 the instant litigation could have a significant impact on [GM’s] bankruptcy estate and the

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21 ¹ GUC Trust acknowledges that the Bankruptcy Court has confirmed GM’s
22 Second Amended Joint Chapter 11 Plan as of March 28, 2011. Doc. 15, at 4. It attempts
23 to distinguish between lawsuits filed before confirmation from “lawsuits filed after
24 confirmation (which is not the case here).” Doc. 15, at 5. *Cf. In re Resorts Intern., Inc.*,
25 372 F.3d 154, 159 (3rd Cir. 2004) (“[A]most seven years *after* Reorganization Plan
26 confirmation, the Trustee filed the underlying professional malpractice action”) (emphasis added). The Court concludes, however, that the concerns giving rise to the
27 narrower “close nexus” test exist as long as confirmation has occurred and a
28 reorganization plan is in place, regardless of when the lawsuit was filed. *See In re Resorts Intern., Inc.*, 372 F.3d at 165 (“After confirmation of a reorganization plan, retention of bankruptcy jurisdiction may be problematic. This is so because, under traditional *Pacor* analysis, bankruptcy jurisdiction will not extend to a dispute between non-debtors unless the dispute creates ‘the logical possibility that the estate will be affected.’ At the most literal level, it is impossible for the bankrupt debtor’s estate to be affected by a post-confirmation dispute because the debtor’s estate ceases to exist once confirmation has occurred.”) (citations omitted).

1 administration, implementation, execution, and consummation of the Plan, thus satisfying
2 the jurisdictional requirements of 28 U.S.C. § 1334(b).” Doc. 15, at 6. It is not enough
3 for GUC Trust to base its jurisdictional claim on the notion that the pending litigation
4 will affect the damages paid out of GM’s bankruptcy estate and that this could reduce
5 distributions to other creditors. *See, e.g.*, Doc. 15, at 4, n.1. The Ninth Circuit has
6 rejected this line of reasoning as overbroad. *Pegasus*, 394 F.3d at 1194, n.1 (“[W]e are
7 not persuaded by the Appellee’s argument that jurisdiction lies because the action could
8 conceivably increase the recovery to the creditors. As the other circuits have noted, such
9 a rationale could endlessly stretch a bankruptcy court’s jurisdiction.” (citation omitted)).

10 The Court also notes that the Bankruptcy Court initially “enjoined all persons from
11 commencing or continuing in any manner on account of or respecting any claim, debt,
12 right, or cause of action for which [GM], the GUC Trust Administrator, or the Avoidance
13 Action Trust Administrator retains sole and exclusive authority to pursue in accordance
14 with the Plan.” Doc. 1, at 3-4. The Bankruptcy Court later modified GM’s
15 reorganization plan “to the extent necessary to enable [the pending litigation] to proceed
16 to final judgment or settlement” Doc. 1, at 4. This modification indicates that the
17 Bankruptcy Court accounted for the pending litigation in connection with GM’s
18 reorganization plan, making it unlikely that resolution of this action will affect “the
19 interpretation, implementation, consummation, execution, or administration of the
20 confirmed plan” to an extent that meets the “close nexus” standard.

21 In sum, GUC Trust’s assertions fall short of convincing the Court that the pending
22 litigation has the requisite “close nexus” to the bankruptcy proceedings. GUC Trust has
23 therefore not overcome the strong presumption against removal. In light of this ruling,
24 the Court need not address whether the case should be remanded on mandatory
25 abstention grounds under 28 U.S.C. § 1334(c)(2), permissive abstention grounds under
26 28 U.S.C. § 1334(c)(1), or equitable grounds under 28 U.S.C. § 1452(b). Doc. 12. The
27 Court will deny Jeon’s motion to sever without prejudice.

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